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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,043	03/20/2000	IAN BAIRD-SMITH	350013-65	9395

7590 01/14/2002

OPPENHEIMER WOLFF & DONNELLY
2029 CENTURY PARK EAST
38TH FLOOR
LOS ANGELES, CA 90067

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 01/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/445,043

Applicant(s)

BAIRD-SMITH ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6 and 8-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 08 August 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Claims 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 9.

2. Applicant's election without traverse of the restriction requirement in Paper No. 9 is acknowledged.

Drawings

1. The corrected or substitute drawings were received on August 8, 2001. These drawings are approved by the examiner.

Claim Objections

2. Claims 1, 4 and 14 are objected to because of the following informalities:

- In claim 1, line 1, "flexible is misspelled;
- In claim 4, line 4, "passes" should read -- presses --; and
- In claim 14, line 5, "can" should read -- cam --.

Appropriate correction is required.

3. Claims 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the claims is not clearly defined since a contradiction exists within the body of the claims of whether the subcombination of the closure only or the combination of the closure and container is being claimed. For instance, the claims set forth the material of the can and positively recited cooperation between the rigid cap and the container body.

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Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,3,4,6,8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi (JP Application 06219464).

Hiroshi teaches a can having a flexible member 3 secured to the can end, a rigid cap 5 having a laminar member and a skirt 7 extending downwardly from a peripheral edge thereof, and a deformable ring member 6 secured to the rigid cap (see fig. 8).

Regarding claim 4, the outer portion 2 of the can comprising the screw threads has an upper edge which is considered to be a flange.

Hiroshi is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi in view of Hardt (US 4,328,905).

Hiroshi teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Hiroshi. Doing

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so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

Regarding claim 9, Hiroshi teaches the claimed invention except for the flexible membrane being made of a metal foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible membrane of metal foil, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 1,3,5,6,9,12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al (US 3,833,142).

Owen is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

8. Claims 1,3,4,6,9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shull (US 4,531,649).

Shull is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

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Regarding claim 11, the unsecured end of the membrane functions as a pull tab and is hingedly attached to the membrane radially beyond the end of the container neck.

9. Claims 1,3,5,6,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revill (GB 2,132,392).

Revill is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Response to Arguments

10. Applicant's arguments with respect to claims 1,3,4,6, and 8-18 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments filed August 8, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that the prior art applied against the claims are not utilized for heating an uncooked foodstuff, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a pre-stressed flexible membrane) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various containers for heating food are cited of interest.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____


Date _____

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Robin A. Hylton 
Patent Examiner
GAU 3727

January 7, 2002


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700